

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3878 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SATTARKHAN BALDARKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr. U.R.Bhatt, A.G.P. for the respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 12/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu Sattarkhan Baldarkhan Pathan has brought under challenge the detention order dated 15.3.1996 rendered by the respondent no. 2 under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985(Act no. 16 of 1985- hereinafter referred to as "the PASA Act.")

2. The grounds on which the impugned order of detention has been passed appear at annexure "B" to the petition and they inter alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of beating people, causing hurt to them and creating an atmosphere of fear. Following offences have been registered against the petitioner under chapters 16 and 17 of the Indian Penal Code.

(1) Around 23.30 O'clock on 10th October 1995, the petitioner in the company of 11 other persons named in the grounds formed an unlawful assembly and assaulted the complainant Shankerbhai Ramsinhbhai and had beaten him with deadly weapons such as sword, pipe, knife, iron bars causing him hurt and also trespassed upon the house of witness Chimanbhai staying in the neighbourhood of the complainant and damaged the movables. The petitioner and his associates had stopped the vehicle (tempo) of witness Bhagatsinh Bindersinh Thakor and by breaking front glass of tempo, caused damage to the tune of Rs. 700/- to him. He in the process also caused damage to the witness Ashok Himmatlal Patil's rickshaw. On these grounds, the offence was registered at Varaccha police station being I cr. no. 398 of 1995 under sections 147, 148, 149, 452, 323, 504, 506(2), 427 of the Indian Penal Code read with section 135 of the Bombay Police Act. One witness Pradeep Abhimanyu Randhir Marathe had identified the petitioner and the weapon of offence (knife) was recovered from the petitioner. The petitioner was arrested on 15.11.1995 and was sent with the charge-sheet to the Court on 7th December 1995. The matter is pending in the Court.

(2) At about 14.30 O'clock on 10th October 1995, the petitioner in the company of four other named persons formed an unlawful assembly and assaulted the complainant and his friends, witness Nathu alias Champu Rupla and assaulted with deadly weapons such as sword. The complainant and the aforesaid witnesses were beaten with the sword and they were given blows with wood and caused grievous hurt to the complainant and the aforesaid witnesses. That is how, the petitioner and other persons committed the offence under sections 147, 148, 149, 326, 323 and 506(2) of the Indian Penal Code read with section 135 of the Bombay Police Act. The said offence has been registered at Varachha road police station being I. cr. no. 400 of 1995. The wooden weapon used in the offence was recovered from the petitioner who was arrested on 15.11.1995. The charge-sheet was submitted on 9th January, 1996 and the matter is pending before the Court.

3. The grounds also recite three incidents appearing from the statements of the witnesses whose names are required to be kept secret. The first instance is of 15th February, 1995. At about 9.00 O'clock in the morning on that day, witness was waiting for passengers by the side of his vehicle which he was using for hire. The petitioner in the company of his two associates went there and asked the witness to start the vehicle saying that they wanted to go to Sachin. The witness was compelled to take them to Sachin, where the witness was required to keep waiting. After some time, the petitioner and his associates returned and asked the witness to take them to the area known as Bombay Market. When they reached the Bombay Market, the petitioner and his associates left the vehicle without paying hire charges. The witness asked for the hire charges whereupon the petitioner threatened the witness saying how could he dare to ask for hire charges. The witness insisted at least for petrol charges. The petitioner got excited, caught hold of the witness by neck and had beaten him. The witness shouted for help. The people collected there. The petitioner thereupon brought out his knife and he in the company of his aides, rushed to the people with knife. That is how people dispersed out of fear. The witness had to apologize for having asked for his hire charges. Even then the petitioner threatened the witness that if he complained before the police, he would be burnt alive.

The second incident is of 29th December 1995. When at about 9.00 a.m. the witness was carrying on his business in the area known as Varachha road, Bombay colony. The petitioner and his three associates had taken the articles from the witness and started leaving witness without being paid and when the witness asked for the price of the goods taken by the petitioner and his associates the petitioner abused for asking him and questioned how he could dare to ask for the price of the goods and got further excited, started beating the witness. People collected there. The petitioner and his associates rushed to them raising their weapons like razor and knife. This led the people to disperse. The shops, cabins and hand carts were closed as the atmosphere of fear was spread on account of the petitioner and his associates assaulting the witness and other persons.

(3) On 23rd January 1996 at 10.00 O'clock in the morning, the witness was going to the place of his business along with his vehicle. When he was passing by

the area known as Gula Pani road, the petitioner was waiting there with his four associates, saw the vehicle, and stopped. He demanded money from the witness by saying that he had to pay fees to the advocate. The witness stated that it was not possible for him to give any amount as his business was not going on well. The petitioner thereupon slapped the witness and dragged him out of the vehicle and had beaten him. The witness shouted for help. People collected there and in the same manner people dispersed on account of assault made by the petitioner and his associates. The petitioner had snatched away a bag of diamonds from the witness and the witness was freed as he expressed his feelings to sacrifice his bag of diamonds.

4. It is in the aforesaid manner that the petitioner is habitually engaged in anti-social activities prejudicial to the maintenance of public order. He has been held to be a dangerous person within the meaning of section 2(c) of PASA.

5. It is on the basis of the aforesaid registered offences and three incidents that the detaining authority has passed the impugned order of detention.

6. I have heard the learned advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention inter alia on the ground that in respect of the aforesaid two registered offences, although copy of the order of bail has been supplied, copy of the bail application was not supplied. Learned A.G.P. has verified from the files which had been kept ready for perusal. This is an allegation of fact. He fairly concedes that the copy of the bail application with regard to the second offence has not been supplied. It is not in dispute that reliance has been placed on the said document along with order of bail inter alia on other documents for passing the impugned order of detention. The detaining authority has reached subjective satisfaction on the basis of these documents including the bail application with regard to the aforesaid second registered offence. It is therefore, submitted that the copy of the bail application in respect of which the order granting bail has been passed has not been given, failing which the petitioner could not make an effective representation before the concerned authorities. Reliance has been placed on the decision in the case of Abdul Sathar Ibrahim Manik vs. Union of India, reported in A.I.R. 1991 SC 226 and on the

decision in the case of M.Ahmed Kutty vs. Union of India, reported in 1990(2) SCC page 1. Dealing with the similar grounds of challenge against the order, the Apex Court has held that bail application and the bail order would be a vital material for consideration. If such documents were relied upon by the detaining authority, copies thereof would have, as of necessity to be supplied to the detenu, failing which it would amount to the denial of legitimate right of making an effective representation and would amount to resulting in violation of Article 22(5) of the Constitution. This was held in Ahmed Kutty's case (Supra) and reliance thereon was placed in Abdul Sathar Ibrahim Manik's case for reaching the sixth conclusion which reads as under:

" In a case where the detenu is released on bail and is at liberty at the time of passing of order of detention, then the detaining authority has to necessarily rely upon such documents as that would be a vital ground for detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

7. In the present case, reference has been made to the fact that the petitioner was enlarged on bail in respect of both the aforesaid registered offences upon which the petitioner made an application for enlarging him on bail. It is an admitted fact that the copy of the bail application in so far as the second registered offence is concerned, has not been supplied. Hence, relying upon the aforesaid two decisions of the Apex Court the petitioner has attacked the impugned order of detention. In my opinion, the petitioner's challenge on this ground is required to be accepted as there is no answer to the same from the learned A.G.P.

8. There are other grounds of challenge against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of the aforesaid decisions, it would not be necessary to deal with other grounds. Hence, following order is passed.

O R D E R

The impugned order of detention is hereby quashed and set aside. The continued detention of the petitioner is hereby put an end to. The petitioner detenu shall be forthwith set at liberty if he is not required to be detained in any other case. Rule is made absolute.

